

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

V.

HENRI SALVADOR GUTIERREZ

Criminal No. 18-10450-MLW

RESPONSE TO COURT ORDER

The Defendant, HENRI SALVADOR GUTIERREZ (“Salvador”), replies herein to this Honorable Court’s directives regarding next week’s in-court sentencing hearings.

Salvador requests that the undersigned counsel, Attorney George Gormley, be allowed to attend each of the hearings in person beginning with the first hearing on Monday, February 14, 2022. If space permits, Salvador requests that Attorney Stephen Super also be allowed to attend.

Regarding his sentencing hearing, Salvador directs this Court to review the following filed documents in the above-named case:

1. Dkt No. 740, Sentencing Memorandum for Salvador Gutierrez, and attached Exhibit A;
2. Dkt No. 741, Affidavit of Gary Slutkin, M.D, and attached Exhibits A, B and C;
3. Dkt No. 755 (filed under seal), accompanying Affidavit of Robert Kinscherff, PhD, JD.
4. Dkt No. 780, Sentencing Memorandum for Vaquerano Canas, pages 5-24, regarding adolescent brain development;
5. Dkt No. 813, Response to Court Order, pages 2-3 and accompanying Exhibits A and B;
6. Dkt No. 819, Response to Court Order: Briefing on Contested Guideline Adjustments, pages 35-37 and footnote 9;
7. Dkt. No. 822, Affidavit of Robert Kinscherff, PhD, JD;

8. Dkt. No. 850, Response to Court Order: PSR Issues.
9. Dkt No. 862, Allocution, and;
10. Dkt No. 866; Appendix/Exhibit, containing “White Paper on the Science of Late Adolescence,” pages 10-16, 17-26, and 36-56.

Salvador is seeking a sentence that will punish him adequately but not longer than necessary to achieve the goals of sentencing articulated at 18 U.S.C. § 3553(a), and to that end the information in the above-cited documents support, *inter alia*, his contentions that:

- The scientific evidence now shows overwhelmingly that the areas of the brain affecting decision making and impulse control are not fully developed until at least an individual’s early 20s. As Salvador committed the offenses in this case when he was a teenager, such information should be considered at sentencing as a mitigating factor;
- While Salvador may have desired to be an MS-13 member as early as 2015 when he began displaying the indicia of membership (*e.g.*, tattoos or the wearing of certain clothing articles), there was no agreement with any verified MS-13 member that he had been accepted into the charged conspiracy of MS-13 until summer 2018. *See United States v. Rivera-Santiago*, 872 F. 2d 1073, 1079 (1st Cir. 1989) (an agreement between the conspirators is the “*sine qua non* of a conspiracy”);
- Salvador conspired with two members of the Huntington MS-13 clique to murder Luis Ruano in December 24 2016, but he was not accepted into Huntington at any level (including *paro*). *See, e.g.*, Grand Jury testimony of CW-19, October 24, 2018, at 35 (Bates No. 6578) (CW-19 stated that he “hung out for about a year” with the Huntington clique without ever becoming a member);

- Any statements Salvador made prior to 2018 denying MS-13 membership, including to a federal judge in U.S. Immigration Court in Boston, reflect that lack of an agreement (express or implied) with MS-13; and
- Salvador has accepted full responsibility for the role he played in violently taking two lives; his regret at having committed these offenses is genuine, and his desire to renounce the empty promises of gang life – and the horrific destructive behaviors they lead to – and devote the rest of his life to his full rehabilitation is sincere.

Respectfully submitted,
HENRI SALVADOR GUTIERREZ

By his attorney,
/s/ George F. Gormley
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Date: February 9, 2022

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ George F. Gormley
George F. Gormley